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On December 5, 2002

TOWNSEND and TOWNSEND and CREW LLP

By: Stephanie J. Whitehurst

Attorney Docket No.: 20695C-002000US
Client Ref. No.: V-258.00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Examiner: Bao Qun Li
Tauer, et al.	Art Unit: 1648
Application No.: 10/006,205	RESPONSE TO RESTRICTION
Filed: December 10, 2001	
For: METHOD OF PRODUCTION OF PURIFIED HAV PARTICLES AND VACCINE PREPARATION	

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action mailed November 5, 2002, Applicants elect with traverse to prosecute the claims of Group I directed to a method for producing complete hepatitis A virus particle by using a nucleic acid degrading agent and protease.

Applicants respectfully request redefinition of the groups in the interest of administrative efficiency and consistent with art recognized classifications. In particular, Applicants respectfully request that Groups I and II be examined together.

The Examiner has grouped the claims of Group I into class 435, subclass 235.1 which relates to preparation or purification of a virus or bacteriophage. The Examiner has placed the claims of Group II into class 435, subclass 308.1. According to the Manual of Classification, this subclass is under subclass 283.1, which relates to an

apparatus used to separate or recover a microorganism from culture media. Thus, subclass 308.1 encompasses claims to an apparatus. Claims 15-25 (Group II), however, are drawn to ***a method*** and not to ***an apparatus***. Thus, Applicants respectfully request correction of the classification of the claims of Group II.

Even assuming that Groups I and II are placed in different subclasses, the restriction between these groups is improper. The MPEP states that where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. *See*, MPEP § 803. In establishing that an "undue burden" would exist for co-examination of claims, the Examiner must show that examination of the claims would involve substantially different prior art searches, making the co-examination burdensome. In order to show undue burden resulting from searching difficulties, the Examiner must show that the restricted groups have separate classification, acquired a separate status in the art, or that searching would require different fields of search. According to the MPEP, where the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions. *See*, MPEP § 808.02 (C).

In conclusion, the separate classification of Groups I and II is incorrect. As noted above, the claims of Group II have been incorrectly placed in a subclass relating to an apparatus, not a method. Moreover, even if the Groups are separately classified, Applicants respectfully submit that the inventions can readily be searched together without an undue burden, particularly since both groups are drawn to methods of producing hepatitis A virus particles. In the Office Action, the Examiner provides no rationale for separating the claims of Group I from those of Group II. In the absence of a showing as to why examination of the two groups meets the criteria set for the above, the restriction is improper and should be withdrawn.

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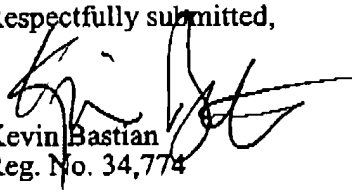
If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



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